SUPREME COURT OF THE UNITED STATES.

No. ~~104.~~ 18.

JACOB MUMMA, PLAINTIFF IN ERROR,

VERSUS

THE POTOMAC COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE COUNTY OF WASHINGTON, DISTRICT OF COLUMBIA.

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DISTRICT OF COLUMBIA, set.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the second day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the fifty-fifth:

Present:

The honorable WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, and JAMES S. MORSELL, *Assistant Judges.*
HENRY ASHTON, Esq., *Marshal.*
WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, among others are the following, to wit:

JACOB MUMMA
against
THE POTOMAC COMPANY. } 8.

Be it remembered, that heretofore, to wit, on the eighteenth day of April, in the year of our Lord one thousand eight hundred and twenty-eight, the said Jacob Mumma, by Richard Wallach, Esquire, his attorney, prosecuted and sued forth, out of the circuit court here, the United States' writ of scire facias, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

Sci. fa.

DISTRICT OF COLUMBIA, to wit.—*The United States of America to the Marshal of the District of Columbia, greeting:*

Whereas, at a circuit court of the District of Columbia, begun and held at the city of Washington, on the first Monday of June, in the year of our Lord one thousand eight hundred and eighteen, a certain Jacob Mumma, by the judgment of the same court, recovered against the Potomac Company as well the sum of five thousand dollars, current money, for his damages which he had sustained by reason of the non-performance of a certain promise and assumption by the said Potomac Company to the said Jacob Mumma before that time made, as, also, the sum of thirteen dollars and eight cents, for his costs and charges by him about his suit in that behalf laid out and expended, whereof the said Potomac Company is convict, as it appeareth of record; and now, on behalf of the said Jacob Mumma, in the said circuit court, it hath been understood, that, although the judgment aforesaid, in form aforesaid, is given, yet execution for the damages, costs, and charges aforesaid still remains to be made for him; wherefore the said Jacob Mumma hath besought that a proper remedy be granted him in this behalf, and as it is right that those things, which, in the said court, are lawfully transacted and adjudged, should be carried into due and speedy execution; you are, therefore, hereby commanded, that, by good and lawful men of your bailiwick, you give notice to the said Potomac Company that they be and appear before the said circuit court, to be held at the city of Washington on the first Monday of May next, to show, if any have or can say any thing for themselves, why the said Jacob Mumma ought not to have his execution against them for the damages, costs, and charges aforesaid, according to the force, form, and effect of the recovery aforesaid, if he, the said Jacob Mumma, shall think fit, and further to do and receive what the said court shall then and there consider concerning them in this behalf; and have there the names of those by whom you shall give them notice, and this writ.

Witness, the honorable William Cranch, Esq. chief judge of the said court, the 18th day of January, Anno Domini 1828.

Issued the 18th day of April, 1828.

W. BRENT, *Clerk.*

WALLACH.

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At which said first Monday of May, in the year of our Lord one thousand eight hundred and twenty-eight, being the day of the return of the aforegoing writ, comes into the circuit court here the said Jacob Mumma, by his attorney aforesaid; and the marshal of the District aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit: "Scire feci, John Mason, President, and Clement Smith, one of the Directors, of the Potomac Company, April 23, 1828, T. Ringgold, Marshal." And the said Potomac Company, being so forewarned, now here come, by Francis S. Key and James Dunlop, Esquires, their attorneys; and thereupon, on motion of the said Jacob Mumma, by his attorney aforesaid, it is ruled by the court here that the said Potomac Company answer to the writ of scire facias aforesaid, or execution will be awarded against them in default thereof. And the said Potomac Company, by their attorneys aforesaid, pray leave of the court here to imparle until the first Monday of December next, and then to answer to the writ of scire facias aforesaid, and to them it is granted; the same day is given to the said Jacob Mumma also.

Return of sci. fa.

Appearance of defend'ts.

Rule, plea & imparlance.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and twenty-eight, to which said day the said Potomac Company had leave to imparle, and then to answer to the writ of scire facias aforesaid, come again into the circuit court here, as well the said Jacob Mumma, by his attorney aforesaid, as the said Potomac Company, by their attorneys aforesaid; and the said Potomac Company, by their attorneys aforesaid, come and defend the force and injury, when and so forth, and pray a hearing of the writ of scire facias aforesaid; which being read and heard, the said Potomac Company say that the said Jacob Mumma ought not to have his execution against them for the damages, costs, and charges aforesaid, in the writ of scire facias mentioned, because they say that there is no such record of the recovery aforesaid against them of the damages, costs, and charges aforesaid, as is above alleged, and this they are ready to verify; wherefore they pray judgment, if the said Jacob Mumma ought to have his execution against them for the damages, costs, and charges aforesaid, by virtue of the recovery aforesaid, &c.

Plea of nul tiel record.

And the said Jacob Mumma, by his attorney, by way of replication to the said plea, saith, that he ought not to be precluded from having his execution aforesaid against the said Potomac Company for the damages, costs, and charges aforesaid, in the writ of scire facias aforesaid mentioned, because he saith there is such a record of the said judgment and recovery against the said Potomac Company of the damages, costs, and charges aforesaid, in the said circuit court remaining, on the first Monday of June, in the year of our Lord eighteen hundred and eighteen, as in the said writ of scire facias is suggested; and he prays that the said term, and the record of the judgment aforesaid by the court here, may be seen and inspected, &c.

Replication.

Thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of court here thereon, is continued until the first Monday of May next.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and twenty-nine, come again into the circuit court here, as well the said Jacob Mumma, by his attorney aforesaid, as the said Potomac

Company, by their attorneys aforesaid; and thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday of December next.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and twenty-nine, come again into the circuit court here, as well the said Jacob Mumma, by his attorney aforesaid, as the said Potomac Company, by their attorneys aforesaid; and thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday of May next.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and thirty, come again into the circuit court here, as well the said Jacob Mumma, by his attorney aforesaid, as the said Potomac Company, by their attorneys aforesaid; and thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday of December next.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and thirty, come again into the circuit court here, the said Jacob Mumma, by his attorney aforesaid, and the said attorneys upon the record of the said Potomac Company; and the said attorneys upon the record of the said Potomac Company, with the consent of the said Jacob Mumma, by his attorney aforesaid, and by leave of the court here for that purpose had and obtained, file in court here the following plea and statement, viz. "The attorneys upon the record of the said defendants now here suggest and show to the court, that, since the rendition and record of the said judgment, the said Potomac Company, in the due pursuance and execution of the provisions of the charter of the Chesapeake and Ohio Canal Company, enacted by the States of Virginia and Maryland, and by the Congress of the United States, have duly signified their assent to the said charter, &c., and have duly surrendered their charter, and conveyed, in due form of law, to the said Chesapeake and Ohio Canal Company, all the property, rights, and privileges by them owned, possessed, and enjoyed under the same, which surrender and transfer from the said Potomac Company have been duly accepted by the said Chesapeake and Ohio Canal Company, as appears by the corporate acts and proceedings of the said company, and the final deed of surrender from the said Potomac Company to the said Chesapeake and Ohio Canal Company, dated on the 15th August, 1828, duly executed and recorded in all the several counties of the States of Virginia and Maryland and District of Columbia, wherein the said Potomac Company held any lands, and wherein the canals and works of said company were situate; which corporate acts and proceedings the said attorneys here bring into court, &c., whereby the said attorneys say the charter of the said Potomac Company became and is vacated and annulled, and the said company, and the corporate franchise of the same, are extinct, &c."

Plea of dissolution of Company.

The truth of the above suggestions admitted; and it is agreed to be submitted to the court, whether, under such circumstances, any judgment can be rendered against the said Potomac Company upon this sci. fa., reviving the judgment in said writ mentioned, and that reference for the said corporate acts and proceedings, and the deed in the

Statement of case.

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above suggestion mentioned, be had to the printed collection of acts, &c. &c. printed and published by authority of the President and Directors of the Chesapeake and Ohio Canal Company in 1828.

RICHARD WALLACH,
Attorney for plaintiff.
W. JONES,
KEY & DUNLOP,
Attorneys for defendants.

Whereupon, for that the court here are not advised to give their judgment of and upon the premises aforesaid, day, therefore, is further given to the said parties, to hear thereof their judgment, until the first Monday of May next, for that the said court here as yet are not, &c.

And now, at this day, to wit, the said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-one, come again into the circuit court here, the said Jacob Mumma, by his attorney aforesaid, and the attorneys upon the record, of the said Potomac Company; whereupon, all and singular the premises aforesaid being by the court here seen, heard, and fully understood, it is considered by the court that the said plaintiff take nothing by his said writ, and that the said writ, for the causes in said suggestion contained as aforesaid, be quashed and held for nought, and that the said plaintiff be in mercy, &c.

Judgment of the court for the defendants.

Test: W. BRENT, *Clerk.*

And whereas, afterwards, to wit, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and thirty-one, the said Jacob Mumma produced and filed in the circuit court here the United States' writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and in all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said supreme court accordingly.

In testimony whereof, I have hereto subscribed my name, and affixed the seal of the said circuit court for the county aforesaid, at the city of Washington, this first day of December, eighteen hundred and thirty-one.

W. BRENT, [L. S.]
Clk. Ct. Ct. Dist. Cola. Co'ty of Wash'n.

Writ of error.

UNITED STATES OF AMERICA. SS.—*The President of the United States, to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting.*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Jacob Mumma, plaintiff, and the Potomac Company, defendant, a manifest error hath happened, to the great damage of the said Jacob Mumma, as by his complaint appears, we, being willing that error, if any

hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said supreme court, to be then and there held, that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness, the honorable John Marshall, chief justice of the said supreme court.

Issued this 16th day of November, 1831.

W. BRENT, [L. S.]
Clk. Ct. Ct. Dist. Cola. Co'ty of Wash'n.

Citation.

UNITED STATES OF AMERICA, *District of Columbia, Washington county, ss.—To the Potomac Company, greeting:*

You are hereby cited and admonished to be and appear at a supreme court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Jacob Mumma is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Jacob Mumma, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Cranch, chief judge of the circuit court for the District of Columbia, this 16th day of November, A. D. 1831.

Service acknowledged.

RICHARD S. COXE,
Of counsel with the Chesapeake and Ohio Canal Company, reserving all objections.

January 11, 1832.

Copy appeal bond.

Know all men by these presents, that we, John Kennedy and R. R. Gurley, are held and firmly bound unto the Potomac Company, in the full and just sum of two hundred dollars, current money, to be paid to the said Potomac Company, its certain attorney or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixteenth day of November, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas lately at a circuit court of the United States for the District of Columbia sitting for the county of Washington, wherein a certain Jacob Mumma was plaintiff, and the said Potomac Company was defendant, judgment was rendered against the said plaintiff, and he having obtained a writ

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of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing it to be and appear at a supreme court of the United States, to be holden at Washington on the second Monday of January next:

Now the condition of the above obligation is such, that if the said Jacob Mumma shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN KENNEDY. [SEAL.]
R. R. GURLEY. [SEAL.]

Signed, sealed, and delivered, in the presence of
H. W. GRAY.

Approved: W. CRANCH.

Copy. Test: W. BRENT, *Clk.*